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IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF IDAHO

IN RE:)	
)	Bkcty. No. 03-21652
GERALD AND ONA LINDSEY,)	
)	Chapter 7
Debtors.)	
)	UNITED STATES' RESPONSE TO
_____)	DEBTORS' OBJECTION TO CLAIM

The United States of America, by and through its undersigned counsel, hereby submits the following response to debtors' objection to claim of the Internal Revenue Service (debtors' objection).

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BACKGROUND

On November 6, 2003, the IRS filed its proof of claim in this matter, in the total amount of \$3,282,634.53. That amount represents (1) a secured claim of \$3,279,634.53 for debtors' assessed outstanding federal income tax liabilities, plus interest and penalties as provided by law, with respect to debtors' tax years 1997 and 1998, and (2) an unsecured priority claim of \$3,000 for debtors' estimated federal income tax liabilities with respect to their tax years 2001 and 2002. The IRS attached to its proof of claim copies of certain notices of federal tax lien which have been properly filed with the Idaho Secretary of State and the Idaho County Recorder, securing debtors' federal tax liabilities for their tax years 1997 and 1998 in all of debtors' property and rights to property, both real and personal.

On May 19, 2004, the IRS filed an amended proof of claim in this matter, in the total amount of \$3,282,867.71. That proof of claim supersedes and replaces the prior proof of claim.

On July 26, 2004, debtors filed an objection to the proof of claim of the IRS. In that objection, debtors take the position that the IRS' proof of claim should be disallowed for the following reasons: (1) the proof of claim does not contain supporting documentation, (2) the November 6, 2003 proof of claim should be disallowed due to the filing of an amended proof of claim on May 19, 2004, and (3) no portion of the proof of claim should be allowed as secured.

DISCUSSION

Debtors' objection fails to state any grounds for denial of the IRS' proof of claim in this matter. Pursuant to Fed. R. Bankr. P. 3001(f), a properly executed and filed proof of claim "shall constitute *prima facie* evidence of the validity and amount of the claim." The properly executed proof of claim shifts to the objecting party the burden of producing evidence, and entitles the claimant to share in the distribution "unless an objection comes forward with evidence

contradicting the claim.” *In re Global Western Dev. Corp.*, 759 F.2d 724, 727 (9th Cir. 1985) (citation omitted); *see also In re Myrland*, 209 B.R. 524, 526 (W.D. Wash. 1997). Moreover, because debtors’ federal tax liabilities arise by operation of law, and are not based on a writing, there is no requirement that supporting documentation be attached to a proof of claim for such liabilities. *In re Los Angeles Airport Hotel Associates*, 106 F.3d 1479, 1480 (9th Cir. 1997). Debtors’ objection herein cannot be sustained on the grounds that the IRS did not attach supporting documentation to its claim, because no such requirement exists. Debtors have failed to present any evidence to overcome the *prima facie* correctness of the IRS’ claim; consequently, they have failed to overcome the presumption created by Fed. R. Bankr. P. 3001(f).

With respect to the two proofs of claim filed by the IRS in this matter, the first proof of claim filed on November 6, 2003, is superceded and replaced by the amended proof of claim filed on May 19, 2004. The Court need not disallow the November 6, 2003 proof of claim because that claim is no longer operative.

With respect to the secured status of the IRS’ proof of claim, the IRS’ notices of federal tax lien attached to the proof of claim filed herein establish the IRS’ status as a secured creditor. *See*, 26 U.S.C. §§ 6321-6323. The total amount of the IRS’ secured claim will be determined at the close of the adversary proceeding currently in progress in this case, *Ford Elsaesser, Ch. 7 Trustee v. Michael Joane et al.*, Adv. No. 04-6098. The trustee obtained a default judgment in that proceeding on June 22, 2004, which had the effect of vesting legal and equitable title in substantial property in the name of the bankruptcy estate of Gerald and Ona Lindsey. The trustee’s efforts to obtain turnover of substantial property to the bankruptcy estate herein through the above-entitled adversary proceeding is ongoing, and the IRS anticipates filing an amended

proof of claim in this matter as soon as the full value of the debtors' assets are made known. Based on the adversary proceedings taking place, debtors' allegation that the IRS' claim is unsecured in this case is incorrect.

CONCLUSION

WHEREFORE, based on the foregoing, the United States respectfully requests that debtors' objection to the claim of the IRS be denied. In the alternative, if the Court is not inclined to deny debtors' objection to the secured status of the IRS' claim, the United States requests that the Court stay any ruling on such secured status until the conclusion of the adversary proceedings described above.

DATED this 10th day of August, 2004.

Respectfully submitted,

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